CAMBRIDGE INTERNATIONAL EXAMINATIONS

Cambridge International Advanced Level

MARK SCHEME for the October/November 2015 series

9084 LAW

9084/31 Paper 3, maximum raw mark 75

This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began, which would have considered the acceptability of alternative answers.

Mark schemes should be read in conjunction with the question paper and the Principal Examiner Report for Teachers.

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Assessment Objectives

Candidates are expected to demonstrate:

Knowledge and Understanding

- recall, select, use and develop knowledge and understanding of legal principles and rules by means of example and citation.

Analysis, Evaluation and Application

- analyse and evaluate legal materials, situations and issues and accurately apply appropriate principles and rules.

Communication and Presentation

- use appropriate legal terminology to present logical and coherent argument and to communicate relevant material in a clear and concise manner.

Specification Grid

The relationship between the Assessment Objectives and this individual component is detailed below. The objectives are weighted to give an indication of their relative importance, rather than to provide a precise statement of the percentage mark allocation to particular assessment objectives.

Assessment Objective	Paper 1	Paper 2	**Paper 3**	Paper 4	Advanced Level
Knowledge/ Understanding	50	50	**50**	50	50
Analysis/ Evaluation/ Application	40	40	**40**	40	40
Communication/ Presentation	10	10	**10**	10	10

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Mark Bands

The mark bands and descriptors applicable to all questions on the paper are as follows. Maximum mark allocations are indicated in the table at the foot of the page.

Indicative content for each of the questions follows overleaf.

Band 1:
The answer contains no relevant material.

Band 2:
The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.
OR
The candidate attempts to introduce an explanation and/or analysis but it is so fundamentally undermined by error and confusion that it remains substantially incoherent.

Band 3:
The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial.
OR
The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules.
OR
The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4:
Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue.
OR
The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

Band 5:
The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

Maximum Mark Allocations:

Question	1	2	3	4	5	6
Band 1	0	0	0	0	0	0
Band 2	6	6	6	6	6	6
Band 3	12	12	12	12	12	12
Band 4	19	19	19	19	19	19
Band 5	25	25	25	25	25	25

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Section A

1 Exemption clauses are commonly disapproved of in court.

Evaluate the ways that the judiciary has found to regulate the use of these clauses without reference to statute, using case law to support your argument. [25]

In general, the courts have found two ways in which to regulate the use of exemption clauses; to question whether a clause was incorporated in a contract and to question whether the words used can be taken to cover the alleged breach.

Candidates are expected to consider the rules of incorporation by signature *(L'Estrange v Graucob, Curtis v Chemical Cleaning & Dyeing Co)*, by reasonable notice *(Parker v SE Railway, Ollie v Marlborough Court Hotel, Thornton v Shoe Lane Parking, Chapelton v Barry UDC)* and by a course of dealing *(Spurling v Bradshaw, Hollier v Rambler Motors).*

This should be followed by an examination of the rules of interpretation. Candidates should identify and explain the application of the *contra preferentem rule (Houghton v Trafalgar Insurance)* to limit the impact of exemption clauses. Some candidates might consider the effect on fundamental breach as in *Suisse Atlantique* and *Photo Productions* cases.

Responses limited to factual recall of principle will be restricted to marks below band 4.

2 The range of remedies that courts have the authority to award means that an appropriate solution can be found for all breaches of contract.

Describe the range of remedies available to the courts and assess the truth of this view. [25]

Cursory examination of the remedies available for breach of contract might indeed suggest that there is a solution for every sort of breach. However, closer examination discloses two main gaps in provision: in relation to *interests protected* and to *practicalities.*

The law focuses mainly on one type of loss: financial loss to the innocent party to the breach. In general, the law ignores mental distress, anxiety and inconvenience caused by breach. Candidates might consider the sort of situation where, for example, under the terms of a contract, a customer pays a builder a large sum of money to buy materials and get a job started, only for the builder to start the job, having spent very little of the customer's money and then fail to return to do any more. If the builder fails to return to do the job, not only is the customer financially out of pocket, but s(he) will often experience considerable mental distress trying to cope with the financial loss, which is seldom if ever recoverable.

Even where available remedies would provide an adequate solution, it would often be totally impractical for a claim to be made, because the costs and/or the time and effort required to undertake litigation are disproportionately high when compared with the amount that could be claimed.

Factual recall without (critical) assessment required by the question will result in maximum marks within band 3.

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3 Explain the three forms that an actionable misrepresentation may take.

Critically assess the suitability of the remedies available to a person who has contracted on the basis of each of these forms of misrepresentation. [25]

Candidates should set the question in context by identifying the effects of mistake at common law in the broadest of terms only and then focus on the issue addressed by the question: the issue of common mistake as to the quality of the bargain struck by the contracting parties. Generally, where the mistake shared by both parties is that the subject matter is of a quality different to that anticipated the mistake has three consequences: the mistake will not be operative, it will have no effect in common law and both parties are still bound by the contract *[Bell v Lever Bros].* However, in the case of *Solle v Butcher,* the Court of Appeal decided that a mistake as to the quality of the subject matter did not prevent the court from setting aside the agreement in equity in the interests of fairness.

In *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd*, the Court of Appeal had to review the relationship between the two former cases. The CofA suggested that it is possible that a common mistake is such that the contract is neither operative, meaning that it cannot be declared void, nor, because the mistake has no effect in common law, can it then be set aside in equity.

Candidates should assess the extent to which the decision in the Great Peace leaves certainty in the law or whether in fact, legislation is now necessary. Candidates must adopt a critical approach to achieve marks in band 4.

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Section B

4 Advise the parties as to their potential contractual liability in these circumstances, using appropriate case law to support your response. [25]

Whilst candidates can be given marginal credit for discussion of the essentials of a valid simple contract, the main issue in this problem is whether there is an 'agreement' – firm offer and corresponding and unqualified acceptance.

The first issue to be dealt with is the 'offer'. Has Celebrity Cuisine made a genuine offer to Basmati & Co in their fax?

Candidates might conclude that this is not a genuine offer; it is more in the nature of an invitation to treat. The words 'can offer' might be considered not to bet a definite proposal to sell the cookers at the stated price but is simply suggesting that they are available for sale.

The test in deciding between an offer and an invitation to treat was set out in *Carlill v Carbolic Smoke Ball Co* which held that an 'invitation to treat is a request for offers' and determined by the 'ordinary person test'. Clearly here, we have an inducement sent out by Celebrity Cuisine to Basmati & Co to enter into negotiations for the purchase of the rice cookers. It is probably not a definite proposal, made with the intention that it becomes binding once accepted (see *Partridge v Crittenden*).

As the fax sent on September 1 by Celebrity Cuisine is not an offer, candidates need to consider the position with the Basmati & Co fax sent on October 1. Is this reply an acceptance in law?. An acceptance is an agreement to be bound to the terms of an offer. The better interpretation regarding the fax sent by Basmati & Co would appear to be that it is actually an offer to buy the cookers for £100 each (*Harvey v Facey*).

Celebrity Cuisine's response to the Basmati & Co's fax stating that the earlier fax is 'receiving attention' is not an acceptance to the offer. An acceptance must be clear and unqualified to be binding. It can be argued that Celebrity Cuisine is actually 'silent' on the issue of acceptance and silence is not acceptance (*Felthouse v Bindley*).

Candidates should then consider the issue of the revocation and decide whether Basmati & Co is required to take delivery and pay for the cookers. Since Basmati & Co made the offer to Celebrity Cuisine which was not actually accepted, they are entitled to revoke that offer. An offer can be revoked by an offeror before communication of acceptance by the offeree (*Goldsborough Mort & Co v Quinn).*

Thus, it would thus appear that Basmati & Co do not have to take delivery or pay for the rice cookers as they are not bound by contract.

The issues must be discussed fully and clearly, applied fully to the scenario and compelling conclusions must be drawn to be awarded marks in bands 4 and 5. Responses effectively limited to factual recall of principle will be restricted to marks below band 4.

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5 Advise the parties of their legal rights and liabilities in this situation.

The principal focus anticipated is that of whether or not an agreement might fail in law for want of supporting consideration. Whilst candidates may be allowed some credit for discussing consideration as a whole, the key to the scenario rests with the rule which says that consideration must be real and not simply something which the promisor is already bound to do for the promise.

In this instance, Patrick is under a legal obligation to build a sauna cabin from specified materials and for an agreed sum of money. Consideration has been furnished on both sides and thus, other thing being equal, a binding contract exists on those terms.
The principal issue is clearly whether or not the contract between Oscar and Patrick is performed in the strict sense. A cabin was constructed, so there was no fundamental breach by Patrick; however he did not construct it from the specified materials. Might this amount to the breach of a contractual term? If so, any remedy flowing from it will depend on whether a condition or warranty. As breach accepted by Oscar, the specified material seems likely to represent simply a breach of warranty and enable an action for damages only.

Patrick on the other hand will want to establish that the promise made by Oscar to pay extra was binding because there was consideration given for it. Candidates should recognise that if Patrick has given consideration, it has not been in the traditional sense (e.g. *Stilk v Myrick, Hartley v Ponsonby*). Candidates need to consider the ruling in *Williams v Roffey Bros* and conclude whether or not a benefit was conferred on Oscar as a consequence. It seems unlikely in this instance.

Credit should be awarded for the consideration of the measure of any damages for the disappointment and loss of amenity suffered by Oscar and his family.

The issues must be discussed fully and clearly, applied fully to the scenario and compelling conclusions must be drawn to be awarded marks in bands 4 and 5. Responses effectively limited to factual recall of principle will be restricted to marks below band 4.

6 Advise Samira of her legal liability and the potential remedies that the two suppliers may obtain against her. [25]

Candidates might respond with an initial discussion of contractual capacity as an essential of a valid simple contract. Particular attention should be paid to the capacity of minors (those under 18 years of age) to make valid simple contracts. Distinction should be drawn between valid contracts (executed contracts for necessaries – *Nash v Inman*, and beneficial employment contracts – *Doyle v White City Stadium*), voidable contracts (e.g. contracts of a continuing nature such as leases – *Corpe v Overton*) which can be avoided before or within a reasonable time after the 18th birthday and those unenforceable (Minors Contracts Act 1987).

Samira would be liable to pay a reasonable price (SOGA 1979) for any goods deemed necessary to her in terms of actual need. Did she need either the suits or the running shoes or was she adequately supplied already (*Nash v Inman*)? Assuming that she hadn't got suits for work and that they were required by her workplace, she would be liable to pay whatever the court thinks a reasonable price for them. Likewise the running shoes: if they are deemed not to be necessaries, no action for the price is possible, but the equitable remedy of specific restitution may be awarded to enforce the return of the shoes that she still has in her possession.

Credit should also be given to candidates who recognise the cooling off period permitted for all internet sales and who assess the implications for this case.

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